(SPACE BELOW FOR FILING STAMP ONLY) WALTER WILHELM LAW GROUP A Professional Corporation Riley C. Walter #91839 Matthew P. Bunting #306034 Danielle J. Bethel #315945 205 East River Park Circle, Ste. 410 Fresno, CA 93720 Telephone: (559) 435-9800 Facsimile: (559) 435-9868 rileywalter@W2LG.com E-mail: 6 Counsel for TULARE LOCAL HEALTHCARE DISTRICT, dba TULARE REGIONAL 7 MEDICAL CENTER 8 IN THE UNITED STATES BANKRUPTCY COURT 9 EASTERN DISTRICT OF CALIFORNIA 10 FRESNO DIVISION 11 CASE NO. 17-13797 In re 12 TULARE LOCAL HEALTHCARE Chapter 9 DISTRICT, dba TULARE REGIONAL MEDICAL CENTER, 13 Adv. Proc. No. 14 Debtor. Date: N/A 15 Time: N/A TULARE LOCAL HEALTHCARE 2500 Tulare Street Place: 16 DISTRICT, dba TULARE REGIONAL Fresno, CA 93721 MEDICAL CENTER, 5th Floor, Courtroom 13 17 Honorable René Lastreto II Judge: Plaintiff, 18 19 GEORGE D. LAVERS, an individual; and GEORGE D. LAVERS and 20 ELIZABETH J. LAVERS, as Trustees 21 under the George D. Lavers and Elizabeth J. Lavers Revocable Living 22 Trust Agreement dated May 10,1995, 23 Defendants. 24 25 COMPLAINT FOR DECLARATORY RELIEF TO DETERMINE 26 NATURE. EXTENT. AND VALIDITY OF INTERESTS IN PROPERTY 27 28

COMPLAINT FOR DECLARATORY RELIEF TO DETERMINE NATURE, EXTENT, AND VALIDITY OF INTERESTS IN PROPERTY

00177906-MPB-04.30.2018

Plaintiff TULARE LOCAL HEALTHCARE DISTRICT, dba TULARE REGIONAL MEDICAL CENTER ("Plaintiff" or "Debtor") alleges against Defendants GEORGE D. LAVERS, an individual and GEORGE D. LAVERS and ELIZABETH J. LAVERS, as Trustees under the George D. Lavers and Elizabeth J. Lavers Revocable Living Trust Agreement dated May 10, 1995 ("Trust") (collectively "Defendants") as follows:

JURISDICTION AND VENUE

- 1. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. § 157, 28 U.S.C. § 1331, and 28 U.S.C. § 1334.
- 2. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (B), (K), and (O); Plaintiff consents to the entry of a judgment in this matter by the Bankruptcy Court.
- 3. This adversary proceeding relates to the Chapter 9 Case No. 17-13797, In re Tulare Local Healthcare District dba Tulare Regional Medical Center (the "Chapter 9 Case") which is currently pending before this Court.
 - 4. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1409.

<u>PARTIES</u>

5. Plaintiff is a California healthcare district, qualified to, and operating in the State of California. Plaintiff is the debtor in the underlying Chapter 9 case. It was previously known as Tulare Local Hospital District. On or about June 1, 1990, Plaintiff executed a short form deed of trust with assignment of rents (individual), as a trustor, concerning the real property bearing the APN 170-072-020 ("Deed of Trust"). This Deed of Trust was recorded on July 26, 1990 in the official records of the County of Tulare, California as Instrument No. 46259. A true and correct copy of the Deed of Trust is attached as Exhibit "A".

6. On information and belief, Plaintiff alleges that defendant George D. Lavers is an individual. George D. Lavers is believed to be a beneficiary under the Deed of Trust.

7. On information and belief, Plaintiff alleges that defendants George D. Lavers and Elizabeth J. Lavers, are Trustees ("Trustees") under the George D. Lavers and Elizabeth J. Lavers Revocable Living Trust Agreement dated May 10, 1995 ("Trust"). Plaintiff alleges that Trustees were transferees of the beneficial interest from George D. Lavers and that Trustees received this interest on or about May 10, 1995 as indicated by an Assignment of Deed of Trust recorded on May 15, 1995 as Instrument No. 95-030974 in the official records of the County of Tulare, California. It is believed that George D. Lavers and Elizabeth J. Lavers are married to each other.

THE PROPERTY

- 8. The Deed of Trust concerns the real property bearing the APN 170-072-020. This property originally had the APN 170-007-020 but this was changed to the current APN subsequent to the Deed of Trust being recorded. The common address is 941 N. Gem St., Tulare, CA 93274.
- 9. The legal description of the first parcel of property is as follows:
 THE SOUTH 72 FEET OF LOT 2 OF TERRACE GARDEN, IN THE CITY OF
 TULARE, COUNTY OF TULARE, STATE OF CALIFORNIA, AS PER MAP
 RECORDED IN BOOK 21, PAGE 95 OF MAPS, TULARE COUNTY RECORDS.
- 10. The legal description of the second parcel of property is as follows:

 LOTS 3 AND 4 OF TERRACE GARDEN, IN THE CITY OF TULARE, COUNTY

 OF TULARE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK

 21, PAGE 95 OF MAPS, TULARE COUNTY RECORDS.
 - 11. The legal description of the third parcel of property is as follows:

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LOT 2 OF TERRACE GARDEN, IN THE CITY OF TULARE COUNTY OF TULARE. STATE OF CALIFORNIA. AS PER MAP RECORDED IN BOOK 21. PAGE 95 OF MAPS, TULARE COUNTY RECORDS.

EXCEPTING THEREFROM THE NORTHERLY 10 FEET THEREOF.

ALSO EXCEPTING THEREFROM THE SOUTH 72 FEEET THEREOF.

12. All three parcels of property share the same APN which is 170-072-020.

GENERAL ALLEGATIONS

- 13. Plaintiff filed a voluntary petition under Chapter 9 of 11 U.S.C. § 101, et seg. ("Bankruptcy Code") on September 30, 2017.
 - A plan of reorganization has not yet been proposed by Plaintiff. 14.
- 15. On or about June 1, 1990, Plaintiff, as Trustor, executed the Deed of Trust in favor of Defendants to evidence its obligation in a principal sum of \$605,000.00. George D. Lavers received this Deed of Trust as a married man as his sole and separate property.
- However, a second short form deed of trust and assignment of 16. rents (individual) was recorded on November 8, 1990 as Instrument No. 74593 ("Corrected Deed of Trust"). A true and correct copy of this Corrected Deed of Trust is attached as Exhibit "B". In the upper right-hand corner of this Corrected Deed of Trust, it states the word "Correctory", indicating that it was recorded to correct a previous mistake. The previous error appears to have been the omission of "Parcel No. 3" which is the aforementioned parcel bearing the legal description as stated in paragraph 11.
- 17. On or about May 10, 1995, George D. Lavers transferred his beneficial interest to Trustees through an Assignment of Deed of Trust that was

recorded on May 15, 1995. Exhibit "C" is a true and correct copy of the Assignment of Deed of Trust.

18. Plaintiff has since satisfied the underlying obligation related to the Deed of Trust and is entitled to have the Deed of Trust reconveyed. All sums owed to the Defendants have been paid. The Deed of Trust clouds Plaintiff's tittle to the subject property.

FIRST CLAIM FOR RELIEF

(Declaratory Relief Sought by Debtor to Determine Nature, Extent, and Validity of Interests)

- 19. Plaintiff realleges and incorporates by reference each allegation contained in paragraphs 1 through 18.
- 20. Under 28 U.S.C. § 2201, the Court "may declare the rights and other legal relations of any interested party seeking such declaration, whether or not future relief is or could be sought". Additionally, under 28 U.S.C. § 2202, "[f]urther necessary or proper relief based on a declaratory judgment or decree may be granted." Additionally, Federal Rule of Bankruptcy Procedure 7001(2) provides that an adversary proceeding may be filed to determine nature, extent, and validity of interests of the Debtor and others in property.
- 21. An actual case or controversy exists relating to the rights and legal obligations of the parties with respect to ownership or other rights of the real property described in paragraphs 8 through 12 above.
- 22. The Plaintiff asserts that it has satisfied the underlying obligation related to the Deed of Trust and thus Plaintiff is entitled to an order clearing the title to the subject property including declaring the Deed of Trust to be void.

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PRAYER

WHEREFORE, the Plaintiff prays for judgment against Defendants as follows:

- 1. For a judgment declaring that:
 - a. The underlying obligation in the principal sum of \$605,000.00 has been satisfied.
 - b. That none of Defendants have any interest in the real property bearing the APN 170-072-020.
 - That Plaintiff is entitled to an order clearing tittle to the C. subject property including declaring the Deed of Trust to be void.
- 2. For attorney's fees and the costs of suit incurred in this action; and
- 3. For such other and further relief as the Court deems just, equitable, and proper.

Dated: April 30, 2018

WALTER WILHELM LAW GROUP A Professional Corporation

By: Motthew Burt Matthew P. Bunting

Attorneys for Debtor, TULARÉ LOCAL HÉALTHCARE DISTRICT, dba TULARE REGIONAL

MEDICAL CENTER

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GOVERNMENT CODE 27361.7 E CERTIFY UNDER PENALTY OF PERJURY THAT THE NOTARY SEAL ON THE DOCUMENT TO MINICH THIS STATEMENT IS ATTACHED READS AS FOLLOWS: MANE OF NOTARY: DIAMY LO DEZ DATE COMMISSION EXPIRES: 4-23-91

PEACE OF EXECUTION: TUINEE DATE: 7-26-90 THE INSUPANCE COMPANY OF CALIFORNIA

TitleWorks Description: Gail / Tulare / Year.Inst: 1990-00046259 / Page 2 of 2 / Order: 20180122154257

EXHIBIT A
Page Z of Z

74593 RECORDING REQUESTED BY 46259 TICOR TITLE INSURANCE COMPANY CORRECTORY SOMOED AT REQUEST OF THE MIS. CO E. Juhn See 4111 RECORDED AT REQUEST OF TICOR TITLE INS. CO. TIME April FEE AND WHEN RECORDED MAIL TO 1990 NOV 8 1990 Dr. George D. Lavers c/o Mr. Kenneth Kuney OFFICIAL RECORDS
TULARE COUNTY, CALIFORNIA TULARE COUNTY, CALIFORNIA Attorney at Law Address 145 No. N Street Tulare, CA 93274 SPACE ABOVE THIS LINE FOR RECORDER'S USE SHORT FORM DEED OF TRUST AND ASSIGNMENT OF RENTS (INDIVIDUAL) CAT. NO. NN00618 SHUH I P TO 1939 CA (10-84) (OPEN END) This Deed of Trust, made this , between lst day of June, 1990 TULARE LOCAL HOSPITAL DISTRICT , herein called Trustor, 869 No. Cherry whose address is Tulare 93274 Ticor Title Insurance Company of California, a California corporation, herein called Trustee, and GEORGE D. LAVERS, a married man as his sole and separate property, herein called Beneficiary, Witnesseth: That Trustor irrevocably grants, transfers and assigns to trustee in trust, with power of sale, County, California, described as: that property in City of Tulare. Tulare County, California, described a PARCEL NO. 1: The South 72 feet of Lot 2 of Terrace Garden, in the City of Tulare, County of Tulare, State of California, as per Map recorded in Book 21, Page 95 of Maps in the office of the County Recorder of said County. PARCEL NO. 2: Lots 3 and 4 of Terrace Garden, in the City of Tulare, County of Tulare, 0 State of California, as per Map recorded in Book 21, Page 95 of Maps in the office of the County Recorder of said County.

PARCEL NO. 3: Lot 2 of Terrace Garden in the City of Tulare, County of Tulare, State of California, as per Map recorded in Book 21, Page 95 of Maps in the office of the County Recorder of said County. ALSO EXCEPTING THEREFROM the Northerly 10 feet thereof. Also excepting therefrom the South 72 feet thereof.

THIS DEED OF TRUST IS BEING RERECORDED FOR THE PURPOSE OF CORRECTING THE LEGAL DESCRIPTION. TOGETHER WITH the rents, issues and profits thereof, SUBJECT, HOWEVER, to the right, power and authority given to and conferred upon Beneficiary by paragraph (10) of the provisions incorporated herein by reference to collect and apply such rents, issues and profits.

For the Purpose of Securing: 1. Performance of each agreement of Trustor incorporated by reference or contained herein. 2. Payment of the indebtedness evidenced by one promissory note of even date herewith, and any extension or renewal thereof, in the principal sum of \$605,000.00 executed by Trustor in favor of Beneficiary or order. 3. Payment of such further sums as the then record owner of said property hereafter may borrow from Beneficiary, when evidenced by another note (or notes) reciting it is so secured.

To Provert the Security of This Deed of Trust, Trustor Agrees: By the execution and delivery of this Deed of Trust and the note secured hereby, that provisions (1) to (14), inclusive, of the fictitious deed of trust recorded in Santa Barbara County and Sonoma County October 18, 1961, and in all other counties October 23, 1961, in the book and at the page of Official Records in the office of the county recorder of the county where said property is located, noted below opposite the name of such country. State of California, as per Map recorded in Book 21, Page 95 of Maps in the office BOOK PAGE
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5889 611 COUNTY COUNTY COUNTY COUNTY Placer Plumas 5 523 62 383 61 905 311 12 420 860 341 494 528 152 617 47 414 456 572 184 527 501 598 60 (which provisions, identical in all counties, are printed on the reverse hereof) hereby are adopted and incorporated herein and made a part hereof as fully as though set forth herein at length; that he will observe and perform said provisions; and that the references to property, obligations, and parties in said provisions shall be construed to refer to the property, obligations, and parties set forth in this Deed of Trust.

The undersigned Trustor requests that a copy of any Notice of Default and of any Notice of Sale hereunder be mailed to him at his address hereinbefore set forth. Signature of Trustor STATE OF CALIFORNIA COUNTY OF TULARE before me, the undersigned, a Notary Public in and for sain personally appeared CARCUCE 149 in and for said Stare, personally known to me or proved to me on the basis of satisfactory exidence to be the person whose name subscribed to the within instrument and acknowledged that TPEY executed the same.

WITNESS my hand and official seal.

Signature OFFICIAL SEAL DIANA LOPEZ NOTARY PUBLIC - CALIFORNIA TULARE COUNTY
My comm. expires APR 23, 155° (This area for official notarial seal) Title Order No. Escrow & KEKM No. 308635-GP

GOVERNMENT CODE 27361.7 T CERTIFY UNDER PENALTY OF PERJURY THAT THE NOTARY SEAL ON THE DOCUMENT TO WHICH THIS STATEMENT IS ATTACHED READS AS FOLIORS:

NAME OF NOTARY: DIAMAL CODES

PLACE OF EXECUTION: TUMBLE DATE: 7-26-90

TICOR TRESINSUPANCE COMPANY OF CALIFORNIA

BY: TAKE THE DATE OF THE PROPERTY OF THE PRO A STATE

TitleWorks Description: Gail / Tulare / Year.Inst: 1990-00074593 / Page 2 of 3 / Order: 20180122154257

EXHIBIT B
Page 2 of 3

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EXHIBIT B
Page 3 of 3

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KEVIN D. GUNNER Nama ATTORNEY AT LAW 1322 E. SHAW AVE #400 City & State FRESNO, CA 93710

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SPACE ABOVE THIS LINE FOR RECORDER'S USE

Assignment of Deed of Trust APN: 170-007-02

FOR VALUE RECEIVED, the undersigned hereby grants, assigns and transfers to GEORGE D. LAVERS and ELIZABETH J. LAVERS, as Trustees under the GEORGE D. LAVERS and ELIZABETH J. LAVERS REVOCABLE LIVING TRUST AGREEMENT DATED May 10, 1995 all beneficial interest under that certain Deed of Trust dated JUNE 1, 1990 executed by TULARE LOCAL HOSPITAL DISTRICT ,Trustor,

TICOR TITLE INSURANCE COMPANY OF CALIFORNIA and recorded as Instrument No. 74593 onNovember 8, 1990in book Trustee,

Official Records in the County Recorder's office of TULARE County, California, describing land therein as: PARCEL NO. 1: The South 72 feet of Lot 2 of Terrace Garden, in the city of Tulare, County of Tulare, State of California, as per Map recording in Book 21, Page 95 of Maps in the office of the County Recorder of said County. PARCEL NO. 2: Lot 3 and 4 of Terrace Garden, in the City of Tulare, County of Tulare, State of California, as per Map recorded in Book 21, Page 95 of Maps in the office of the County Recorder of said County.

PARCEL NO. 3: Lot 2 of Terrace Garden in the City of Tulare, County of Tulare, State of California, as per Map recorded in Book 21, Page 95 of

South 72 feet thereof. TOGETHER with the note or notes therein described or referred to, the money due and to become due thereon with

Maps in the office of the County Recorder of said County. ALSO EXCEPTING THEREFROM the Northerly 10 feet thereof. Also excepting therefrom the

Dated May 10, 1995 STATE OF CALIFORNIA } S.S. COUNTY OF ___ FRESNO

interest, and all rights accrued or to accrue under said Deed of Trust.

May 10, 1995 before me.

KEVIN D. GIINNER a Notary Public in and for said County and State, personally appeared GEORGE D. LAVERS

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal

Signature

KEVIN D. GUNNER Comm. & 964273 NOTARY PUBLIC - CALIFORNIA Fresno County My Comm Expires Apr 14, 1996

(This area for official notarial seal)

T 380 Legal (2-94)

EXHIBIT C

TitleWorks Description: Gail / Tulare / Year.Inst: 1995-00030974 / Page 1 of 1 / Order: 20180122154257